Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1973

NO. 73-1157

RICHARD E. GERSTEIN and ROBERT L. SHEVIN

Appellants,

-vs-

NANCY COE, PATRICIA NOE and DR. LYNN P. CARMICHAEL, and all others similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

JURISDICTIONAL STATEMENT

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

NO.

RICHARD E. GERSTEIN and ROBERT L. SHEVIN

Appellants,

-vs-

NANCY COE, PATRICIA NOE, and
all others similarly situated,

Appellees.

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JURISDICTIONAL STATEMENT

This is an appeal from a decision of a three-judge court in the Federal District Court, Southern District of Florida, declaring that the "husband's consent" and "parental consent" provisions of the Florida abortion statute are unconstitutional. The same decision recommended that Florida law enforcement officers should refrain from enforcing those provisions of the statute.

OPINION BELOW

This is an appeal from an order of th Southern District Court of Florida in Ca No. 72-1842-Civ-JE, dated August 13, 197 as corrected on August 29, 1973. Petiti for rehearing was denied in an order dat October 29, 1973. These unreported opin ions are set out in the appendix.

JURISDICTION

Notice of appeal was filed by the de dants on November 28, 1973. Petition f rehearing having been denied on October 1973, said notice was timely filed. St tory authority for this appeal is 28 U. 1253. Plaintiffs filed their corrected notice of appeal from the denial of inj tive relief on December 10, 1973.

This Court indicated in Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) that direct appeal to this Court was appropriate under similar cir cumstances.* Further, the declaratory relief statute, 28 U.S.C. 2201, defini- tively states that such relief amounts a final decree.

This Court has granted a direct appe on pendency grounds when the ruling on

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*Justice Blackmun also indicated tha certiorari, pursuant to Rule 20, could an alternative route in some cases.

declaratory relief was inextricably related to the injunctive count as is the case herein. Cf. Zwickler v. Koota, 389 U.S. 241, 88 S.Ct. 391, 19 L.Ed.2d 244; Samuels v. Mackell, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed. 2d 688.

STATUTORY PROVISIONS IN QUESTION

Those portions of Florida's abortion statute, which were involved in the decision, appear below. The entire statute, Florida Statute §458.22, appears in the appendix.

QUESTIONS ON APPEAL

I

DID THE THREE-JUDGE PANEL ERR IN DECLARING THE "PARENTAL CONSENT" PROVISIONS OF FLORIDA STATUTE §458.22 TO BE UNCONSTITUTIONAL, AND, IN EFFECT, ENJOINING THE ENFORCEMENT OF SAID LAW ON THE BASIS THAT THIS COURT'S DECISIONS IN ROE V. WADE, 410 U.S. 113, 93 S.Ct. 75, 35 L.Ed. 2d 173, AND DOE V. BOLTON, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed. 2d REQUIRED THAT RESULT?

II

DID THE THREE-JUDGE PANEL ERR IN DECLARING THE "HUSBAND'S CONSENT" PROVISIONS OF FLORIDA STATUTE §458.22 TO BE UNCONSTITUTIONAL, AND, IN EFFECT, ENJOINING THE ENFORCEMENT OF

SAID LAW ON THE BASIS THAT THIS COURT'S DECISIONS IN ROE V. WADE, SUPRA, AND DOE V. BOLTON, SUPRA, ALLEGEDLY REQUIRED THAT RESULT?

FACTS PERTINENT TO THIS CASE

This suit was originally brought by six plaintiffs. Plaintiff Paula Poe (pseudonym) alleged that her husband would not consent to an abortion, if asked, and that under the Florida Statute in question, she was thereby prohibited from obtaining an abortion. Plaintiff Rita Roe (pseudonym) alleged that she was an unmarried minor and that her parents would not consent to an abortion. She, too, would have been prohibited from obtaining an abortion under Florida law.

Plaintiff Pamela Harris sued in her capacity as an abortion counselor, who was allegedly limited in her capacity to recommend abortions because of the contested provisions of the Florida statute. Drs. Carmichael, Shore and Herman alleged that the parental and husband consent provisions limited their capacity to carry out the practice of medicine.

In an order dated December 28, 1972, plaintiffs Poe and Roe were dismissed. Subsequently, plaintiffs Coe and Noe intervened. These two plaintiffs were also prevented from obtaining abortions by the husband's consent provision and the parental consent provision, respectively.

A three-judge court was convened. That nel granted declaratory relief as to the o provisions in question. They also ated that they assumed that the appro- iate state officials would abide by the ling.

SUBSTANTIAL FEDERAL QUESTION

This Court, in two landmark cases, has led that at least in regard to the first imester of pregnancy, state criminal abor- on statu.es violated the right of privacy unded in the Fourteenth Amendment. Roe Wade, 410 U.S. 113, 93 S.Ct. 705, 35 Ed.2d 147 (1973); Doe v. Bolton, 410 U.S. 9, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973). is Court also pointed out in those deci- ons that not all limitations upon abor- ons were constitutionally impermissive.

The Roe decision specifically indicated at the ruling did not encompass the ques- ons of the constitutional validity of rental consent and husband's consent re- irements contained in many state statutes. Footnote 67). The decision of the Southern strict Court of Florida dealt with those o provisions, and essentially held that e and Doe dictated that those requirements held unconstitutional.

The decision of the three-judge court that case clearly involves a substantial deral question. Including Florida, at ast ten states have either one or both those provisions in their present laws.*

*The 1973 statutes of several states ere not available to us at the time this rief was prepared.

Further, insofar as abortions are essentially lawful in every state (at least during the first trimester), the question of whether or not a husband's consent may be required, or whether parental consent may be required for an unmarried minor, affects all of our states.

Since abortion laws in most states have been restrictive in their nature prior to this Court's decisions in Roe and Doe, there is very little case law on this subject. Therefore, innumerable conflicting State and Federal decisions may be anticipated until this Court resolves these issues. Obviously, there would be general uncertainty produced by conflicting decisions in various jurisdictions, and an inconsistency in terms of the effect upon the lives of citizens in different states or federal districts. Such uncertainty of the law in regard to a literal life or death matter would be most undesirable. Therefore, definitive guidance from this Court is required so that life will not be prevented through abortion, nor will an abortion be prohibited for any individual without the foundation of clearly established constitutional guidelines.

It would, indeed, be a tragedy for anyone affected by this issue to learn that a lower court ruling permitting or prohibiting abortion based upon consent requirements was subsequently reversed by this Court. A prompt hearing and ruling by this Court would preclude such occurrences.

It is obvious, therefore, that the issues involved in this appeal present

a substantial Federal question. Does the constitutional right to privacy permit the states to require a husband's consent or parental consent prior to an abortion? That question is presently unanswered and can only be effectively answered by this Court.

CONCLUSION

Based upon the reasons and authorities set forth above, it is urged that this Court take jurisdiction of the appeal in this cause.

Respectfully submitted,

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January 1974

APPENDIX

OPINION OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA

CASE NO. 72-1842

NANCY COE, PATRICIA NOE, et al.,

Plaintiffs,

v.

RICHARD E. GERSTEIN, etc., et al.,

Defendants.

Before DYER, Circuit Judge, MEHRTENS and EATON, District Judges.

This class action for declaratory and injunctive relief, heard by a duly convened three-judge district court, is a constitutional challenge to Florida's regulation of therapeutic abortions. Three plaintiffs in this proceeding -- Carmichael, Shore and Herman -- are Florida-licensed physicians practicing in the field of Family Medicine. They attack the constitutionality of Fla. Stat. Ann. §458.22(3) (1972) [hereinafter the "spousal or parental consent" requirement][1];

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1. "F.S.A. sec. 458.22(3) Writings required.--

"One of the following shall be obtained by the physician prior to terminating a pregnancy:

and §10D-0.05 of Rules on Termination of Pregnancy, Division of Health, Ch. 10D-05 (1972) [hereinafter "Rules", Ch. 10D-05], prohibiting public advertisement of medical facilities available for the termination of pregnancies. The complaint was filed prior to January 22, 1973, the date on which the United States Supreme Court handed down its decisions in Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) and Doe v. Bolton, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973).

---

*(a) The written request of the pregnant woman and, if she is married, the written consent of her husband, unless the husband is voluntarily living apart from the wife, or

(b) If the pregnant woman is under eighteen years of age and unmarried, in addition to her written request, the written consent of a parent, custodian or legal guardian must be obtained, or

(c) Notwithstanding paragraphs (a) and (b) of this subsection, a physician may terminate a pregnancy provided he has obtained at least one corroborative medical opinion attesting to the medical necessity for emergency medical procedures and to the fact that to a reasonable degree of medical certainty the continuation of the pregnancy would threaten the life of the pregnant woman."

Subsequent to that date plaintiffs Coe[2] and Noe[3], two females each pregnant for less than three months, were permitted to intervene. They join the physician-plaintiffs in attacking the constitutionality of the "spousal or parental consent" requirement, and in addition, challenge both Fla. Stat. Ann. §458.22(2) (1972) [hereinafter the "approved facility" requirement], and Ch. 10D-65 of the "Rules" in its entirety -- on the grounds that they are constitutionally impermissible State interferences with a woman's right of privacy, as that right encompasses the decision to terminate a pregnancy. The defendants are officials of the State of Florida charged with the enforcement of the disputed sections of the statute and the rules promulgated under the statute.

The State of Florida has expressly abandoned any defenses relating to the "approved facility" requirement or to the "Rules", Ch. 10D-65 in its entirety, acknowledging that these issues are foreclosed by the decisions in Roe v. Wade,

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2. Plaintiff Coe is a real person suing under a pseudonym to preserve her anonymity. She is a married woman unable to obtain her husband's consent for a therapeutic abortion which her physician has certified to be necessary to preserve her health. She is a citizen of Florida and a resident of this District.

3. Plaintiff Noe is a real person suing under a pseudonym to preserve her anonymity. She is an unmarried minor unable to obtain parental consent for a therapeutic abortion which is necessary to preserve her health. She is a citizen of Florida and a resident of this District.

supra, and Doe v. Bolton, supra. We agree that these issues are foreclosed and hold that F.S.A. §458.22(2), the "approved facility" requirement, and the Division of Health Rules, Ch. 10D-65, are constitutionally invalid because they make no distinction between the first trimester of pregnancy, a period in which the State may not interfere by regulating a woman's decision to terminate a pregnancy, and the latter trimesters where the State may impose regulations reasonably related to the preservation and protection of maternal health. Roe v. Wade, 93 S.Ct. at 731-32. In addition, neither the statute nor the "Rules" makes any distinction between the period prior to viability of the fetus, a period in which the State has no compelling interest in preserving and protecting potential life, and the period after viability where the State may regulate the termination of pregnancy to protect potential life. Id. Since the "approved facility" requirement and the "Rules" do not make these distinctions, they "sweep too broadly . . . [and], therefore, cannot survive the constitutional attack made upon [them] here." Id. at 732.

The only issue which the State of Florida has contested is plaintiffs' constitutional attack on F.S.A. §458.22(3), the "spousal or parental consent" requirement. Roe v. Wade, supra, and Doe v. Bolton, supra, are not directly in point on this question. Those cases dealt specifically with the State's interest in the protection of potential life, which may be termed the interest of the fetus, and the State's interest in the protection of maternal health, which may be termed the interest of the mother. They did not address the

interests of third parties, such as the husband or father, or the parents of an ummarried pregnant female minor. Neither issue was raised by the factual or statutory setting of the two cases, and the Supreme Court did not decide the constitutionality of these types of consent provisions.[4]

In Roe v. Wade, supra, the Supreme Court concluded that "the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation." 93 S.Ct. at 727. State regulation limiting this right "may be justified only by a 'compelling state interest'." Id. at 728. Compelling state interests were recognized in two areas: (1) the State may intervene and regulate abortions to protect maternal health after approximately the end of the

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4. "Neither in this opinion nor in Doe v. Bolton, post, do we discuss the father's rights, if any exist in the constitutional context, in the abortion decision. No paternal right has been asserted in either of the cases . . . . We are aware that some statutes recognize the father under certain circumstances. North Carolina, for example . . . requires written permission for the abortion from the husband when the woman is a married minor, that is, when she is less than 18 years of age . . .; if the woman is an unmarried minor, written permission from the parents is required. We need not now decide whether provisions of this kind are constitutional." Roe v. Wade, 93 S.Ct. at 733.

first trimester of pregnancy, and (2) the State may intervene and regulate, or even proscribe, abortions after the fetus becomes viable. Id. at 731-732. The State is therefore forbidden from any regulation, at least in order to protect maternal health or potential life, until these "compelling points" are reached; as a result, the pregnant woman's right of privacy is "sole" during the first trimester. Id. at 730.

We are persuaded that if the State cannot interfere to protect the fetus' interest in its potential life until the compelling point of viability is reached, neither can it interfere on behalf of husbands or parents to protect their interests in that potential life until the fetus becomes viable. We are persuaded, also, that if the State cannot interfere to protect the pregnant woman's physical or mental health until approximately the end of the first trimester, neither can it interfere on behalf of husbands or parents to protect their interests in her health until that point is reached. If the State could demonstrate that the third-party interests sought to be protected by this provision attach at the moment of conception and are interests which fall completely outside the categories of protection of maternal health and potential life, Roe v. Wade, supra, would not be controlling and the provisions would withstand constitutional attack.

We recognize that the interest of the husband in the embryo or fetus carried by his wife, especially if he is the father,[5] is qualitatively different from the interest which the mother may have in her health and the interest of the viable fetus in its potential life. The interest which a husband has in seeing his procreation carried full term is, perhaps, at least equal to that of the mother. The biological bifurcation of the sexes, which dictates that the female alone carry the procreation of the two sexes, should not necessarily foreclose the active participation of the male in decisions relating to whether their mutual procreation should be aborted or allowed to prosper. It may be that the husband's interest in this mutual procreation attaches at the moment of conception.

We recognize further that the interest of parents within a family unit is qualitatively different, at least in part, from the interest which a pregnant minor daughter may have in her maternal health and the interest which the viable fetus may have in its potential life. The State of Florida has urged persuasively that the family unit is, except by positive provision of state law to the contrary, a self-governing entity and that the traditional and primary obligation for the custody, care, control, and nurture of minor children resides in their parents.

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5. We recognize that the husband of the pregnant woman may not always be the father of the potential child. We do not undertake to discuss the situation where the husband is not the father of the potential child, since the statute does not purport to deal with such a situation.

But while these paternal and parental interests may be compelling, and may in fact exist at the moment of conception, it is apparent that not all paternal or parental interests fall outside the categories of protection of maternal health and potential life. We cannot avoid the conclusion that at least a portion of the interests which husbands and parents have in their pregnant wives or minor daughters may be reasonably related to protection of maternal health and protection of potential life. The failure of the Florida "spousal or parental consent" requirement is that it gives to husbands and parents the authority to withhold consent for abortions for any reason or no reason at all. It allows a husband or parent to withhold consent out of concern for maternal health or the potential life of the fetus, in addition to other compelling reasons each may have for doing so.

As we learn from Roe v. Wade, supra, the State has no authority to interfere with a woman's right of privacy in the first trimester to protect maternal health nor can it interfere with that right before the fetus becomes viable in order to protect potential life. It follows inescapably that the State may not statutorily delegate to husbands and parents an authority the State does not possess.

We do not learn from the opinion in Roe v. Wade, supra, the age of plaintiff Roe, the pregnant woman who enjoyed the "fundamental", "personal right of privacy" [emphasis supplied] recognized by the Supreme Court. But we do know that a pregnant woman under 18 years of age

not, under the law, be distinguished
n one over 18 years of age in reference
"fundamental", "personal", constitu-
nal rights.

Accordingly, we are compelled to hold
.A. §458.22(3), the "spousal or paren-
consent" requirement unconstitutional.[6]
ce the primary substantive section of
Florida Abortion Act. F.S.A. §458.22
unconstitutional, the minor procedural
definitional provisions are no longer
ported and the entire Act is invalid.

In holding the Florida "spousal or
ental consent" requirement unconsti-
ional, this Court, of course, does
limit the traditional and substan-
l right which husbands and parents
e in asserting their respective in-
ests within the family unit. Cer-
nly husbands ought to participate
h their wives in decisions relating
whether or not their mutual procre-
on should be aborted or allowed to
sper, and parents ought to advise and
de their unmarried, minor daughters in
ecision of such import. But a state
ch has no power to regulate abortions
certain areas simply cannot constitu-
nally grant power to husbands and

Because of the practical problems
olved in drafting or enforcing a
tute which would exclude interests
ated to maternal health in the first
mester, we are inclined to agree with
Justice Rehnquist (dissenting) that,
a practical matter, "a State may im-
e virtually no restrictions on the
formance of abortions during the
st trimester of pregnancy." Roe v.
e, 93 S.Ct. at 736.

parents to regulate in those areas. Therefore, husbands and parents cannot look to the state to prosecute and punish the physician (or other participants) who performs an abortion against the wishes of the husbands and parents.

We find it unnecessary to provide plaintiffs injunctive relief. We assume the defendants and other state officials charged with enforcement of the invalidated statute and its derivative rules will give full recognition to the judgment of this Court.

The Court retains jurisdiction to enter whatever orders necessary to be entered to effectuate this declaratory judgment.

Dated at Miami, Southern District of Florida, this 13th day of August, 1973.

David W. Dyer
United States Circuit Judge

W. O. Mehrtens
United States District Judge

Joe Eaton
United States District Judge

ORDER OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA

CASE NO. 72-1842-Civ-JE

ORDER UNDER RULE 60 FEDERAL RULES OF CIVIL PROCEDURE

NANCY COE, PATRICIA NOE, et al.,

Plaintiffs,

-v-

RICHARD E. GERSTEIN, etc., et al.,

Defendants.

In issuing its Opinion in this case on ust 13, 1973, the Court overlooked the t that at least one provision of Florida tute 458.22, not under attack in this e, is neither a minor procedural or finitional provision. Therefore, it is

ORDERED and ADJUDGED that the second tence of the third paragraph of page bered six of the Opinion is hereby eted from the opinion. That sentence d as follows:

"Since the primary substantive sections of the Florida Abortion Act, F.S.A. 458.22 are unconstitutional, the minor procedural and definitional provisions are no longer supported and the entire Act is invalid."

The effect of this correctional order that only those sections of F.S.A. .22 that are directly attacked,

specifically section 458.22(2) and section 458.22(3), have been declared unconstitutional.

This Court's opinion of August 13th, 1973 is otherwise unaffected by this Order.

DONE and ORDERED at Miami, Southern District of Florida, this 22 day of August, 1973.

David W. Dyer
United States Circuit Judge

W. O. Mehrtens
United States District Judge

Joe Eaton
United States District Judge

ORDER OF THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 72-1842-Civ-JE

NANCY COE, PATRICIA NOE, ET AL.,

Plaintiffs,

vs.

RICHARD E. GERSTEIN, ETC., ET AL.

Defendants.

The Petition for Rehearing heretofore filed in this case is hereby DENIED.

David W. Dyer
United States Circuit Judge

W. O. Mehrtens
United States District Judge

Joe Eaton
United States District Judge

Enter: this _____ day
of October, 1973.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 72-1842-Civ-JE

NANCY COE, PATRICIA NOE, and
all others similarly situated,

Plaintiffs,

vs.

RICHARD E. GERSTEIN, State Attorney
for the Eleventh Judicial Circuit,

WILSON T. SOWDER, Director, Division
of Health, State of Florida,

ROBERT L. SHEVIN, Attorney
General of Florida,

their agents, those acting in concert
with them, and all others
similarly situated,

Defendants.

I. The defendants Richard E. Gerstein and Robert L. Shevin hereby file their notice of appeal with the Clerk of the Federal Court, Southern District of Florida. The defendants are appealing from the final order of a three-judge panel in the above styled cause dated

August 13, 1973, as corrected August 23, 1973. Petition for rehearing was denied October 29, 1973.

This appeal is taken pursuant to 28 U.S.C.A. 1253.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the entire record of the proceedings in the instant cause.

Please instruct the Court Reporter to transcribe the notes of the oral argument which took place on March 13, 1973, and to submit that transcription with the other portions of the record in this cause.

III. The following questions are presented by this appeal:

A. DID THE THREE-JUDGE PANEL ERR IN DECLARING THE "PARENTAL CONSENT" PROVISIONS OF FLORIDA STATUTE §458.22 TO BE UNCONSTITUTIONAL, AND, IN EFFECT, ENJOINING THE ENFORCEMENT OF SAID LAW ON THE BASIS THAT THIS COURT'S DECISIONS IN ROE V. WADE, 410 U.S. 113, 93 S.Ct. 75, 35 L.Ed.2d 173, AND DOE V. BOLTON, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d REQUIRED THAT RESULT?

B. DID THE THREE-JUDGE PANEL ERR IN DECLARING THE "HUSBAND'S CONSENT" PROVISIONS OF FLORIDA STATUTE §458.22 TO BE UNCONSTITUTIONAL, AND, IN EFFECT, ENJOINING THE

ENFORCEMENT OF SAID LAW ON THE BASIS THAT THIS COURT'S DECISIONS IN ROE V. WADE, SUPRA, AND DOE V. BOLTON, SUPRA, ALLEGEDLY REQUIRED THAT RESULT.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and corre copy of the foregoing Notice of Appeal to the Supreme Court of the United States wa furnished by mail to Roy Lucas, Esquire, Suite 1501, Watergate South, Washington, D. C., 20037, and to Joseph P. Farina, Esquire, 9717 Northeast Second Avenue, Miami Shores, Florida, 33138, Attorneys for Plaintiffs, this 28th day of November 1973.

J. ROBERT OLIAN
Chief Counsel, South Florida Of
Assistant Attorney General

Florida Statute §458.22.--Termination of pregnancies.

(1) DEFINITIONS.--As used in this section, unless the context clearly requires otherwise:
(a) "Physician" means a doctor of medicine or osteopathic medicine licensed by the state under chapter 458 or chapter 459 or a physician practicing medicine or osteopathy in the employment of the United States or this state.
(b) "Approved facility" means a hospital licensed by the state and accredited by the Joint Commission on Accreditation of Hospitals or approved by the American Osteopathic Hospital Association or a medical facility licensed by the division of health pursuant to rules and regulations adopted for that purpose, provided such rules and regulations shall require regular evaluation and review procedures.
(2) TERMINATION OF PREGNANCY.--It shall be unlawful to terminate the pregnancy of a human being unless the pregnancy is terminated in an approved facility by a physician who certifies in writing that:
(a) To a reasonable degree of medical certainty the continuation of the pregnancy would substantially impair the life or health of the female; or
(b) There is substantial risk that the continuation of the pregnancy would result in the birth of a child with a serious physical or mental defect; or
(c) There is reasonable cause to believe that the pregnancy resulted from rape or incest.
(3) WRITINGS REQUIRED.--One of the following shall be obtained by the physician prior to terminating a pregnancy:

(a) The written request of the pregnant woman and, if she is married, the written consent of her husband, unless the husband is voluntarily living apart from the wife, or
(b) If the pregnant woman is under eighteen years of age and unmarried, in addition to her written request, the written consent of a parent, custodian, or legal guardian must be obtained, or
(c) Notwithstanding paragraphs (a) and (b) of this subsection, a physician may terminate a pregnancy provided he has obtained at least one corroborative medical opinion attesting to the medical necessity for emergency medical procedures and to the fact that to a reasonable degree of medical certainty the continuation of the pregnancy would threaten the life of the pregnant woman.
(4) REPORTING PROCEDURE.--
(a) The director of any medical facility in which a pregnancy is terminated pursuant to this section shall maintain a record of such procedures. Such record shall include the date the procedure was performed, the reason for same, and the period of gestation at the time the procedure was performed. A copy of such record shall be filed with the department of health and rehabilitative services, which shall be responsible for keeping such records in a central place from which statistical data and analysis can be made.
(b) Records maintained by an approved facility pursuant to this section shall be privileged information and deemed to be a confidential record and shall not be revealed except upon the order of a court of competent jurisdiction in a civil or criminal proceeding.

(5) RIGHT OF REFUSAL.--Nothing in this section shall require any hospital or any person to participate in the termination of a pregnancy, nor shall any hospital or any person be liable for such refusal. No person who is a member of, or associated with, the staff of a hospital nor any employee of a hospital or physician in which or by whom the termination of a pregnancy has been authorized or performed, who shall state an objection to such procedure on moral or religious grounds, shall be required to participate in the procedure which will result in the termination of pregnancy. The refusal of any such person or employee to participate shall not form the basis for any disciplinary or other recriminatory action against such person.

(6) PENALTIES.--

(a) Any person who performs, or participates in, the termination of a pregnancy in violation of the requirements in subsection (2) of this section which does not result in the death of the woman shall guilty of a felony of the third degree, punishable as provided in §775.082, §775.083 or §775.084.

(b) Any person who performs, or participates in, the termination of a pregnancy in violation of the requirements in subsection (2) of this section which results in the death of the woman shall be guilty of a felony of the second degree, punishable as provided in §775.082, §775.083 or §775.084.

(c) Any person who violates any provision of subsections (3) or (4) of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in §775.082 or §775.083.

(7) EXCEPTION.--The provisions of this section shall not apply to the performance of a procedure which terminates a pregnancy in order to deliver a live child.

History.--§§1-7, ch. 72-196.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO.

RICHARD E. GERSTEIN and ROBERT L. SHEVIN,

Appellants,

-vs-

NANCY COE, PATRICIA NOE, and
all others similarly situated,

Appellees.

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

AFFIDAVIT OF SERVICE

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

I, J. ROBERT OLIAN, Assistant Attorney General, State of Florida, first being duly sworn according to law, do depose and say:

I HEREBY CERTIFY that a copy of the foregoing JURISDICTIONAL STATEMENT was served upon ROY LUCAS, Esquire, Suite 1501, Watergate South, Washington, D. C., 20037, and to JOSEPH P. FARINA, Esquire,

9717 Northeast Second Avenue, Miami Shores, Florida, 33138, Attorneys for Appellees, by mailing a copy of same to them by United States Mail, First Class postage prepaid, pursuant to Rule 33 of this Court, this _____ day of January, 1974.

J. ROBERT OLIAN
Assistant Attorney General

SWORN TO and SUBSCRIBED BEFORE ME at Miami, Dade County, Florida, this _____ day of January, 1974.

NOTARY PUBLIC
State of Florida

My Commission Expires